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| 10/668,036      | 09/22/2003  | Michael C. Kemery    | NIKE.105811         | 4757             |

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11/02/2004

Michael J. Gross  
SHOOK, HARDY & BACON L.L.P.  
One Kansas City Place  
1200 Main Street  
Kansas City, MO 64105-2118

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| EXAMINER |
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AMERSON, LORI BAKER

|          |              |
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| ART UNIT | PAPER NUMBER |
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3764

DATE MAILED: 11/02/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/668,036

Applicant(s)

KEMERY, MICHAEL

Examiner

L. Amerson

Art Unit

3764

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 22 September 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-22 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 11-22 is/are allowed.
- 6) ☒ Claim(s) 1-5 and 8-10 is/are rejected.
- 7) ☒ Claim(s) 6, 7 and 11 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 22 September 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Specification***

1. The disclosure is objected to because of the following informalities: Figures 7-9 has not been described in the "Brief Description of the Several View of the Drawings".

Appropriate correction is required.

### ***Claim Objections***

- a. The claim(s) are narrative in form and replete with indefinite and functional or operational language. The structure which goes to make up the device must be clearly and positively specified. The structure must be organized and correlated in such a manner as to present a complete operative device. The claim(s) must be in one sentence form only. Note the format of the claims in the patent(s) cited.

- b. Claims 10 and 21 objected to because of the following informalities: claim 10, line 2, "like" should be deleted; claim 21, line1, "type" should be deleted.

Appropriate correction is required.

### ***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

- c. Claims 1, 5 and 10, 13-14 are rejected under 35 U.S.C. 102(b) as being anticipated by Stack. Stack discloses a platform (16) and a fulcrum (S).

Regarding the language, "for improving a user's balance having a selectively controllable degree of stability and configured for positioning on a surface", "generally orthogonal to the platform into...thru line 12" has not been given patentable weight because the recitation is purely functional in nature and does not recite any structure. As to claim 5, further comprising a lock (24, 26,28).

Regarding the language, "each pivot member to secure a selected position of the respective pivot member on the bottom surface of the platform" has not been given patentable weight because the limitation "pivot member has not been positively recited in the independent claim. As to claims 10 and 13-14, the language has not been given patentable weight because the limitation "pivot member" has not been positively recited in the independent claim

d. Claims 1-5, 8, 10, and 13-14, as broadly claimed, are rejected under 35 U.S.C. 102(b) as being anticipated by Naville. Naville discloses a platform (10) and a fulcrum (11) in Figure 1. Regarding the language, "for improving a user's balance having a selectively controllable degree of stability and configured for positioning on a surface", "generally orthogonal to the platform into...thru line 12" has not been given patentable weight because the recitation is purely functional in nature and does not recite any structure. As to claims 2-3, further comprising a track (fig. 3) having rails. The language has not been given patentable weight because the limitation "pivot member" has not been positively recited in the independent claim. As to claim 4, a cavity is formed in the bottom surface of the platform (fig. 4). Regarding the language, "with a major dimension extending

parallel to the pair of rails such that the rails and upper mounting region of the pivot members are substantially disposed within the cavity” has not been given patentable weight because the recitation is purely functional in nature and does not recite any structure. As to claim 5, further comprising a lock (114-5).

Regarding the language, “each pivot member to secure a selected position of the respective pivot member on the bottom surface of the platform” has not been given patentable weight because the limitation “pivot member has not been positively recited in the independent claim. As to claim 8, the platform having a pair of arcuate side edges (37) in figure 1 bridged on ends (26). As to claims 10 and 13-14, the language has not been given patentable weight because the limitation “pivot member” has not been positively recited in the independent claim.

3. Claims 6-7, and 9 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. Claims 11-22 are allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to L Amerson whose telephone number is (703) 306-5576. The examiner can normally be reached on Mon.-Fri from 8-5 p.m. Interviews Tue. and Thur..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Justine Yu can be reached on 703-308-2675. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



L. Amerson